

FILED

OCT - 8 1976

# DOCKETED

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

NY 1030

MIDWAY MANUFACTURING COMPANY: Deposition of  
vs. : Louis Etlinger  
THE MAGNAVOX COMPANY : SECOND DAY  
and : 74 Civ 1657 CBM  
SANDERS ASSOCIATES, INC. :  
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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

THE MAGNAVOX COMPANY, et al : Consolidated Actions  
vs. : 74 C 1030  
BALLY MANUFACTURING : 74 C 2510  
CORPORATION, et al : 75 C 3153  
75 C 3933  
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Continued deposition taken  
pursuant to a subpoena and notice at the Sanders Associates,  
Inc., Headquarters; Spit Brook Road, Nashua, New Hampshire;  
Wednesday, April 7, 1976; commencing at nine-thirty in  
the forenoon.

At 11:00 a.m. you will receive the letter of  
April 7, 1976, from the Clerk of the Court.

ERNEST W. NOLIN & ASSOCIATES

General Stenographic Reporters

369 ELGIN AVE., MANCHESTER, N. H. 03104

TELEPHONE: 623-6906

ORIGINAL

The only indication PRESENT is that you have already

seen on them is the For Midway Manufacturing Company, Bally Manufacturing Corporation and Empire:

put it in the chronological by Donald L. Welsh, Esq., indicate that the letter 135 South LaSalle Street, Chicago, Illinois.

willing to stipulate that if all these letters

For Atari, Inc.:

were mailed to the address on about the date

they list. Flehr, Hohbach, Test, Albritton & Herbert, by Thomas O. Herbert, Esq., 160 Sansome Street, 15th Floor, San Francisco, California.

check of the chronological file also look for any

For Sanders Associates, Inc., and Magnavox Company:

through the file for Theodore W. Anderson, Esq., and James T. Williams, Esq., 77 West Washington Street, Chicago, Illinois.

and I would like to

Stenotype Reporter:

request that you do the same for the period of January

Ronald J. Hayward

through April or May of 1968.

MR. ANDERSON: "As a threshold matter, we did find that the chronological file for 1968 does still exist and it has been checked

and both of the letters you asked about; the letter of April 9, 1968, Exhibit 22-16; and the letter of April 12, 1968, Exhibit 22-17, does have copies of those two letters in the chronological file.

The only indication other than what you have already seen on them is the initial CF, and we don't know who CF is, but we understand that is the person who put it in the chronological file and that does indicate that the letter was mailed and we are willing to stipulate that both of those letters were mailed to the addressees on about the date they bear.

ANALYSTIC EXAMINATION

MR. WELSH: Did you in your called as a witness, having been previously sworn, was check of the chronological file also look for any further evidence and continue his testimony as follows: other letters between Sanders and TelePrompter?

(Interrogatories by MR. ANDERSON: We did not go

Q. through the file for that purpose. You did not learn

of Mrs. Williams' letter. MR. WELSH: I would like to

request that you do that for the period of January through April or May of 1968.

A. That is my recollect. MR. ANDERSON: From January

Q. of '68 to May of '68? Williams' knowledge of that

same prior to the time. MR. WELSH: Yes, from January 1.

A. No. As far as I can MR. ANDERSON: Do you want to

know if there are copies of letters that are already

Q. here? I recall a letter from either Mr. Williams

or Mr. Sanders to MR. WELSH: Yes. We would

like to know - have an identification of all letters  
passing between Sanders and TelePrompter during  
that time and if there are any which are not a  
part of Exhibit 22, we would request copies of  
those?

MR. ANDERSON: All right;  
we will make that search.

A. Mr. Etlinger was with him,  
called as a witness, having been previously sworn, was  
further examined and continued his testimony as follows:

(Interrogatories by Mr. Welsh.)

Q. Mr. Etlinger, is it correct that you did not learn  
of Mr. Williams' knowledge of a game at Stanford  
when he was a student until the time of the  
Russell deposition?

A. That is my recollection and I so stated yesterday.

Q. Did you hear about Mr. Williams' knowledge of that  
game prior to the Russell deposition?

A. No. As far as I can recall, that is the first  
instance that I heard about it as I testified.

Q. Do you recall a conversation with either Mr. Williams  
or Mr. Anderson regarding Mr. Williams having seen

a game, such conversation occurring around May of 1975?

A. No.

Q. Prior to the Russell deposition, were you informed - did you receive any information about Mr. Williams having seen any game as a student? That is, any game played using a cathode ray tube?

A. No, I don't recall any such discussions with him.

Q. Do you recall being informed about that by anyone?

A. No.

Q. Either prior to or during the pendency of the applications for the reissue patents involved in this litigation, did you have any discussions with Mr. Briody regarding the question of whether to bring any prior art to the attention of the Patent Office?

A. I don't recall any conversation with Mr. Briody about the necessity of bringing any prior art to the attention of the Patent Office.

Q. Did you ever discuss with Mr. Briody the question of whether to bring Space War to the attention of the Patent Office?

A. As far as I know, no.

8 Q. Shortly after you read the article on Space War in "III Cybernetic Frontiers," did you discuss Space War with Mr. Briody?

A. Yes.

MR. WELSH: Yes, this is a

9 Q. Did you discuss with Mr. Briody whether to make an investigation to determine more about Space War? the current question and go back and read the

A. I don't think so. I answer. I think it is three

10 Q. What did you discuss with Mr. Briody regarding the Space War? answered. I do not know.

MR. ANDERSON: I object to (Whereupon, the requested question and answer were work product and instruct the witness not to answer.

11 Q. Is it your testimony that you did not discuss with Mr. Briody the question of whether to call Space War to the attention of the Patent Office? it is

the same question or MR. ANDERSON: I think you erized have asked him that question and he has answered that question. I do not know.

12 Q. Is that your testimony? WELSH: I don't believe he instructed you not to MR. ANDERSON: Do you want to have it reread?

MR. ANDERSON: You may answer the question, if you MR. WELSH: The question?

13  
14. MR. ANDERSON: And the answer.  
You asked him that specific question and he answered  
it.

(Whereupon, the previous  
15. MR. WELSH: Yes, this is a  
question was read back  
different question.

16. (By the reporter.)

17. MR. ANDERSON: Well, then,  
read the current question and go back and read the  
other question and answer. I think it is three  
questions back. The next to the last one that he  
actually answered. (Action of Space bar to any claims  
18. pending in the applications for the reissue  
19. (Whereupon, the requested  
20. patents?)

21. question and answer were  
22. read back by the reporter.)

23. MR. ANDERSON: Well, I object.  
24. read back by the reporter.)  
25. I think this is all in the area of attorney-client  
privilege communication. MR. ANDERSON: I object to the  
26. question either on the grounds, then, that it is  
27. the same question or the new question mischaracterizes  
28. the testimony if you say it is a different question.

29. One of the two. Is it a common interest with respect  
30. to the pending application? MR. WELSH: I don't believe the  
31. instructed you not to answer. But still, I

32. understand you are not MR. ANDERSON: You may answer  
33. the question, if you can. You want to so stipulate,

then I guess I would THE WITNESS: Would you read the question, please? testifying about Space War.

If you are relying on Space War as prior art in (Whereupon, the previous the litigation in which you are taking this question was read back deposition, I believe that communication is with by the reporter.)

respect to that prior art that you are alleging,

privilege communications THE WITNESS: re Yes. on To the

best of my knowledge, yes. which you are trying to

13 Q. Did you have any discussion with Mr. Briody regarding the relation of Space War to any claims pending in the applications for the reissue of the patents?

MR. WELSH: These are communications which MR. ANDERSON: Well, I object.

I think this is all in the area of attorney-client privilege communications and work product and I have instructed the witness not to answer. and we are

claiming that as prior MR. WELSH: What is the basis for this claim of attorney-client privilege, which

Mr. Anderson? Is it a common interest with respect to the pending applications in the Patent Office?

in the reissue applications MR. ANDERSON: Well, I understand you are relying upon Space War as prior art. If you are not and you want to so stipulate,

then I guess I would have no objection to having this witness perhaps testify about Space War. If you are relying on Space War as prior art in the litigation in which you are taking this deposition, I believe that communication is with respect to that prior art that you are alleging, these privilege communication, and the relationship only with that prior art on which you are trying to "tiers" rely and the claims and the patents are issues in this lawsuit and clearly communications regarding them are privileged and work product. All, they are the same claims for MR. WELSH: These are the communications which took place during pendency of the applications for reissue in the Patent Office and the question is directed to the claims of those pending applications; and whether or not we are claiming that as prior art in the litigation would seem to have no bearing on the communications which they had with respect to the claims then pending.

Q. Are you claiming that they had a common interest in the reissue applications? MR. ANDERSON: The claims then

Q. within a few years. MR. ANDERSON: The claims then pending are the claims in this lawsuit, the very

A. same claims in most cases, and the lawsuit was pending for over a year at the time that the alleged conference you are asking about occurred and therefore I think it is clearly work product and attorney-client privilege. the patents were issued, but I do know MR. WELSH: At the time of these or of this discussion which I understand is shortly after Mr. Etlinger read the "II Cybernetic Frontiers" article in July of 1975, the claims of the reissue applications were not then involved in the litigation.

Q. The letter forwarded MR. ANDERSON: Well, they are the same claims for the most part as are in the issued patents. In fact, you haven't fixed the time in which these conversations occurred. It is quite possible that one of the reissues had already been reissued when these conversations occurred. as far as the record shows and I just think it is clearly attorney-client privilege and it is clearly work product.

Q. How soon after you read the "II Cybernetic Frontiers" article did you discuss it with Mr. Briody?

A. Within a few weeks. I believe it was I just read it.

Q. Was it within a few days?

15 A. I am not sure, it was sometime after we got the article.

16 Q. Was it prior to the reissuance of the first reissue patent? and its relation to the clause

A. I don't remember the date that the patents were issued, but I do know that that book came very late in that month, June or July, whenever it was sent to me. It was either delayed in the mail or something, but it came very close to the end of the month. Something like the 24th or the 25th.

17 Q. The letter forwarding that identified as Document 10 in the Magnavox and Sanders responses to Bally Corp. Interrogatory No. 11 was dated July 21, 1975. If I don't believe you have answered the question which was, Did you have the discussion prior to the date of reissue of the first patent which was August 5, 1975? I have limited the question now to the

A. I am not sure. I do remember that booklet took some days, many days to get here. It came very

20 Q. close to the end of the month. Whether I picked it

A. up right away or within a week or two, I can't remember. My recollection is that I had it for some time before I looked at it.

8 Q. Do you have the notes regarding that conversation?

A. No. Answer the question based on my instructions.

9 Q. Did you in that conversation with Mr. Briody  
1 discuss Space War and its relation to the claims  
of the reissue applications which were not in the  
original patents? Something concerning with

10 MR. ANDERSON: I object to the  
question as an attorney-client communication subject

A. to the attorney-client privilege and work product  
and I instruct the witness not to answer.

11 MR. WELSH: Mr. Anderson,  
those claims at the time of that conversation were  
12 not involved in this litigation and I believe it is  
a proper question when limited, at least when  
13 limited to the reissue claims. I believe it is

A. also proper when not limited to the reissue claims,  
but we have limited the question now to the  
14 reissue claims.

15 MR. ANDERSON: Well, we disagree.

Q. Do you refuse to answer, Mr. Etlinger? I mentioned

A. Have I been instructed by my attorney not to answer?

16 Q. Was the use of the? MR. ANDERSON: Yes, you have  
been. The potential uses of the invention which

THE WITNESS: Then I refuse to answer the question based on my instructions from my attorney.

21 Q. When you and Mr. Baer were considering getting in touch with outside people who might have an interest in doing something commercially with TV games, did you and he have conversation on commercializing the TV game as a training device?

A. Well, I mentioned yesterday we had thought about many things, but we decided that the big market and the big potential was the commercial field as applied to TV sets, monitors and games.

2 Q. Even though you made that decision, did you prior to it give consideration to commercializing the TV game concept as a training device?

A. Not seriously.

Q. What consideration did you give to that?

A. Well, to the best of my recollection, we had discussed all the potential uses of the invention and we decided to go after the market I mentioned in my previous answer.

Q. Was the use of the TV game as a training device one of the potential uses of the invention which

you considered?

MR. ANDERSON: He has avoided

A. I think I have answered that question twice, he  
Mr. Welsh. I can't answer any more on that. I have  
question. I have already given you an answer twice  
twice yesterday, twice today; and if my attorney  
doesn't say it, I feel I am being harassed for  
the same thing four times in a row. I can't give  
you any other answers, Mr. Welsh. We looked at  
it and we decided the market for it and we didn't  
do anything about it and that is where it stood.

Q. Did you and/or Mr. Baer discuss the use of the  
TV gaming concept as a training device with anybody  
else at Sanders? I will permit the witness to

A. I don't believe so.

Q. Was such a use one of the potential uses which you  
considered for invention?

MR. ANDERSON: Well, the (whereupon, the previous  
witness answered that question several times  
yesterday and today and he has so indicated as he  
just indicated on the record that he thinks he  
answered it four times and that may be; but he  
certainly has answered the question both yesterday  
and today. potential uses of the invention discussed

by you and Mr. Baer? MR. WELSH: He has avoided answering the question. He has stated that he and Mr. Baer considered many things, they discussed all of the potential uses and they reached a decision to go into the commercial field. He has not said whether the use of the game as - or the concept as a training device was one of the potential uses he and Mr. Baer considered. MR. ANDERSON: Could I have the answer back? MR. ANDERSON: Are you saying that that was not testified to yesterday?

(Whereupon, the previous question is struck out.) MR. WELSH: I am. (Whereupon, the previous question is struck out.) MR. ANDERSON: Well, I think (by the reporter.) you are in error. I will permit the witness to answer. You and Mr. Baer consider that the TV gaming concept would be used. THE WITNESS: Would you read the question, please?

(Whereupon, the previous question is struck out.) MR. ANDERSON: I object, the (Whereupon, the previous question is struck out.) question is lacking a foundation or it is ambiguous, question was read back one of the two.

(by the reporter.)

Q. Did you consider that the TV gaming concept was the

Q. All right; I will restate the question. Was the use of the TV gaming concept as a training device one of the potential uses of the invention discussed

by you and Mr. Baer? MR. WELCH: Read the answer,

A. In a general way, yes.

Q. In what general way did you and Mr. Baer discuss  
(Whereupon, the previous  
the use of the TV gaming concept as a training  
answer was read back  
device?

A. When we considered what were the potential

C. possibilities of the invention. Could be made useful  
in training apparatusMR. HERBERT: Could I have the

A. answer back? patents that are ancillary to these  
that are not in this suit which involve selections  
(Whereupon, the previous  
of answers put up on a board, on a TV screen, which  
answer was read back  
you can receive an indication if you get a correct  
by the reporter.)

answer.

Q. How did you and Mr. Baer consider that the TV gaming  
concept would be used as a training device or not?

A. in a training device? these concepts worked out,

Mr. Welch.

MR. ANDERSON: I object, the

Q. question is lacking a foundation or it is ambiguous,  
one of the two.

Q. Did you consider that the TV gaming concept was the  
useful in training apparatus? I think the

A. Well, we thought that we could in some way make it  
useful for training apparatus.

MR. WELSH: Read the answer, ring  
please. (Time when Mr. Baer and Mr. Etlinger were  
discussing ways to commercialize the TV game concept,  
(Whereupon, the previous  
which I understand to be around early 1984 when they  
answer was read back  
were contacting outside people such as TelePrompTer.  
by the reporter.)

MR. ANDERSON: I think that is

Q. In what way did you think it could be made useful  
in training apparatus? in the context of prior to

A. We have some patents that are ancillary to these  
that are not in this suit which involve selections  
of answers put up on a board, on a TV screen, which  
you can receive an indication if you get a correct  
answer. (Question was read back by the reporter.)

Q. Was there any other way which you thought the TV  
gaming concept might be used in training apparatus?

A. I don't think we had these concepts worked out,  
by the reporter.)  
Mr. Welsh.

Q. Did you consider the possibility of flight or  
military training devices? (Question was read back by the reporter.)  
never did any design. MR. ANDERSON: I object to the  
question as not fixed in time. I think the last  
record is becoming ambiguous as to what time you  
are referring to the invention.

Q. Is it your answer that MR. WELSH: "I am still referring to the time when Mr. Baer and Mr. Etlinger were discussing ways to commercialize the TV game concept, which I understand to be around early 1968 when they were contacting outside people such as TelePrompter.

in response to the Q. MR. ANDERSON: if I think that is a shift in the time frame from your first time frame which was, I think, set in the context of prior to talking to anybody. another question and not tell him what his answer was, MR. WELSH: Well, I am now setting it as around that time for the use of the TV gaming concept as THE WITNESS: Would you read the question, please?

Q. MR. ANDERSON: That is a (Whereupon, the previous flight or military in contrast to training device question was read back generally, which has been asked many times and by the reporter.) answered several times.

THE WITNESS: In just a problem general way, we never worked out any apparatus, never did any design work or any other work or made any proposal to anyone for doing so." It was just a passing discussion on the general potential possibilities of the invention. In a general way,

Q. Is it your answer that in a general way you did also consider the use of the TV gaming concept in a flight or military training device? I object, the record will show if MR. ANDERSON: I object, that his answer is what the court reporter took down it, in response to the question. And if you want to pose your own answer that is up to you, but I would think if you want to ask the witness another question, ask him another question and not tell him what his answer was, which is of record.

Q. Did you in a general way consider the use of the TV gaming concept as a flight or military training device? and Mr. Baer consider the use of the TV gaming concept as MR. ANDERSON: (That is a training flight or military in contrast to training device generally, which has been asked many times and answered several times?)

THE WITNESS: I have a problem in your question, I don't know what you mean by "in a general way," Mr. Welsh.

Q. You answered the previous question, "in a general way," and it wasn't clear whether there was to be a period after that or whether in a general way,

you went on and did not make any specific proposals to anyone.

understand the report. MR. ANDERSON: I object, the record will show if there is a period after what he said and if the record is wrong, we can correct it.

MR. WELSH: Would you read that answer, then, and tell me whether you put a period after it? state whether they considered the possibility.

(Whereupon, the requested  
MR. ANDERSON: I think he did.  
answer was read back  
I heard the reporter read it.  
by the reporter.)

Q. Did you and Mr. Baer consider the use of the TV gaming concept as a flight or military training device? But, as he answered, his answer was not responsive to the question. MR. ANDERSON: I object, I

think that is the question that has just been asked and answered.

MR. WELSH: He didn't answer the question.

MR. ANDERSON: You asked it and he gave an answer.

MR. WELSH: He gave an answer,

but he didn't answer the question. & the answers  
you think you would. MR. ANDERSON: He gave, as I  
understand the reporter read it, a specific answer.  
I instruct the witness not to answer the question,  
if has been asked and answered. I can't do.

MR. WELSH: He merely stated  
that they did not design any specific apparatus, ~~per~~ing  
he did not state whether they considered the  
possibility. ~~ions.~~

MR. ANDERSON: He I think he did.  
I heard the reporter read it. do something.

MR. WELSH: If the reporter  
had put a period after the phrase, "in a general  
way," then I agree that he would have answered the  
question; but, as he answered, his answer was not  
responsive to the question. ~~ed,~~ and then go on.

MR. ANDERSON: This entire line  
is irrelevant as far as I can see and we are wasting  
a lot of time and you have asked the same questions  
over and over again. Now, either your grammar  
is weak or you don't

MR. WELSH: Only because I am  
not getting answers. Now in the deposition with  
this witness or per MR. ANDERSON: You are getting

answers. Maybe you are not getting the answers you think you would like, but that is immaterial.

answered it, the record. MR. WELSH: He can answer the question yes or no and he evaded answering it by referring to something they didn't do.

MR. ANDERSON: I absolutely

disagree with that, he has not been evading answering any question. He has been complete in answering those questions.

device, how did you contemplate the concept would be MR. WELSH: He answered the question by saying he did not do something.

device, Mr. Welsh. MR. ANDERSON: He said in a general way.

I don't think I used MR. WELSH: He said, "in a general way," we did not do so-and-so. He did not say in a general way, period, and then go on.

If you are Mr. Bauer MR. ANDERSON: He said in a general way, comma. Now, I don't think there is any difference between in a general way, comma, or in a general way, period. Now, either your grammar

is weak or you have something that you are just not going to accomplish in the deposition with this witness or perhaps never, but I see no difference

7 days ago from 10:00 AM

✓ between in a general way, comma, and in a general way, perh. You have asked the question and he has answered it, the record speaks for itself. 7/13/76  
J.W.

(Whereupon, a recess was taken.)

Q. When you and Mr. Baer considered the use of the TV gaming concept in a general way as a flight or military training device, how did you contemplate the concept would be so used? 7/13/76  
J.W.

A. I don't think I used the term flight or training device, Mr. Welsh. 7/13/76  
J.W.

Q. Flight or military training device? 7/13/76  
J.W.

A. I don't think I used the term flight or military training device either. 7/13/76  
J.W.

Q. Well, the question that had been asked of you was if you and Mr. Baer considered the use of the TV gaming concept in a flight or military training device and your answer included in it the phrase in a general way. 7/13/76  
J.W.

A. Then I am sorry, let me state that we had in a general way - and if you want to put in a period after there, be my guest - considered various applications 7/13/76  
J.W.

7/13/76 J.W.

of the concepts of the inventions involved and in a very light and cursory way went over the things and we decided that we would approach what we considered to be the best potential market and we then went after and sought after licenses.

Q. Referring to Exhibit 22-4B, which was an agreement signed by Mr. Schlafly of TelePromter, there appears a reference to Sanders television gaming and training apparatus or methods, what was meant by training apparatus or methods there?

MR. ANDERSON: I object to the question as vague and ambiguous and lacking a foundation, asking for speculation of the witness as to what was meant by a document that you placed before him. Meant to whom?

MR. ANDERSON: The witness has already answered that THE WITNESS: Mr. Welsh, I don't know if this is either the title or the name as contained in the patents. If they are, then it was meant to cover whatever are in those patent titles; and, if you would make those available to me, I might see them. Well, here is Patent No. 3,728,480, the title is Television Gaming and Training Apparatus. We did have, I think, some method claims in one of

41 Q. these patents. As far as I can remember, this ity  
covers - the attempt there was to cover what the ing  
patents are and the concepts involved.

42 Q. Is it your statement that training apparatus used  
in Exhibit 22-4B means the same thing as it means  
in Patent No. - the title of Patent No. 3,728,480?

43 Q. what was the purpose MR. ANDERSON: I object to your  
question. You are characterizing what you think  
the witness stated. The record makes a record of he  
what the witness stated in response to the question.  
If you have another question, ask him a new witness  
question. answer that question in that form.

44 Q. What did you mean by training apparatus in  
Exhibit 22-4B? other than those set out in the

declarations of the MR. ANDERSON: The witness has

A. already answered that question to the extent that

Q. "training apparatus" is a part of a larger term  
which you have taken out of context. The term is in  
TV gaming and training apparatus or methods in

A. Exhibit 22-4B.

Q. What examiner were THE WITNESS: Well, I don't

A. recall what I had in mind on June 18, 1968,

Q. Mr. Welsh. It has been a long time ago. vision that

44 Q. Did you and Mr. Baer ever discuss the possibility of using the TV gaming concept as a flight training device? applications?

A. Yes.

MR. ANDERSON: If you recall.

Q. What did you have to THE WITNESS: I don't recall,

A. Mr. Welsh, of the department and the attorney

Q. What was the purpose of filing the reissue could have applications? or or not the discussion would be

help. MR. ANDERSON: I object to the

Q. question as speculative, opinion, attorney-client

A. privilege, work product; and I instruct the witness not to answer that question in that form.

Q. Was there any purpose for filing the reissue applications other than those set out in the declarations of the applications?

A. Not that I am aware of. MR. ANDERSON: I object to

Q. Were the reissue applications discussed with

an examiner in the Patent Office prior to the filing of those applications? This is not to answer the

A. Yes. tion in that form.

Q. What examiner were they discussed with?

A. I don't know. I don't remember the examiner. the

Q. Did you have anything to do with the decision that?

Q. the reissue applications be discussed with an examiner in the Patent Office before the filing of those applications? the Patent Office might be,

A. Yes. I have no specific recollection of that.

Q. What did you have to do with that decision?

A. As manager of the department and the attorney-examiner responsible for its operation, I think I could have decided whether or not the discussion would be held. ambiguous in that Mr. Seligman works for

Q. Were you the one who made the decision?

A. I am responsible for what goes on in my department and I would have to answer yes.

Q. What was the purpose of discussing the applications

A. with the examiner prior to the filing of the

Q. applications? then discuss the matter of meeting with the examiner reg MR. ANDERSON: Is I object to this the question as attorney-client privilege and

A. work product in the form in which it is posed.

Q. I will instruct the witness not to answer the question in that form.

Q. Are you aware of any purpose for the applications

Q. for the reissue patents being discussed with the

examiner prior to the filing of those applications?

A. I am not sure of any specific purpose. I would have to assume that the discussion was held to determine what the attitude of the Patent Office might be, but I have no specific recollection of that.

Q. Did you have any discussions with Mr. Williams or Mr. Seligman prior to the meeting with the examiner?

A. I don't know, Mr. Welsh. MR. ANDERSON: I object to the question as being in the alternative, also vague and ambiguous in that Mr. Seligman works for Mr. Etlinger and I presume he had some discussions with Mr. Seligman many times prior to that on many different subjects.

Q. Who attended the discussions with the examiner?

A. I believe it was Mr. Williams and Mr. Seligman.

Q. Did either of them discuss the matter of meeting with the examiner regarding the reissue applications with you prior to their attending the meeting?

A. I must have talked to Mr. Seligman about it.

Q. You actually had to authorize him to do it, did you not?

A. That is correct.

Q. Whose idea was it to conduct such a meeting with the Patent Office examiner regarding the reissue

applications? ~~ations~~ prior to their filing?

A. I have trouble answering MR. ANDERSON: I object to the question as work product and attorney-client privilege and instruct the witness not to answer.

Q. Were any changes made in the reissue applications after the meeting with the examiner? ~~re~~ filed?

A. I don't know, Mr. Welsh.

Q. Did you receive a report as to what occurred at the meeting? ~~re~~

A. Well, I would assume that Mr. Seligman gave me a verbal report when he came back.

Q. You don't recall? ~~re~~ was marked as Exhibit 22-20 and

A. I don't recall the details of it, no.

Q. Do you recall anything about what he said occurred at the meeting with the examiner? ~~re~~

A. No, I don't recall the details. I think this is a

Q. Did you ever consider the question of making with a record in the reissue application files the fact that a meeting was held with the examiner prior to the filing of the applications? ~~re~~

A. Not that I remember, Mr. Welsh.

Q. Was anyone else other than you involved in the decision to meet with the examiner regarding the

reissue applications prior to their filing?

A. I have trouble answering your question because I am not so sure what you mean by it.

Q. Did you consult with anyone regarding whether to have a meeting with the examiner regarding the reissue applications before they were filed?

A. I believe so. Section II marked "Joint Venture" on

Q. Who did you consult with? a statement, "Sanders

A. Mr. Williams. I then under No. 3 there, "Bills and

Q. Anyone else? ions." What devices did you have in mind

A. Not that I remember offhand.

Q. I hand you now what was marked as Exhibit 22-20 and ask if that is familiar to you? devices which would

A. Yes. useful or required in the CATV field.

Q. How is it familiar to you? apparatus?

A. To the best of my recollection, I think this is a

Q. draft for the possible agenda for discussions with

TelePromter, to interest someone in commercializing

Q. Was a final version of the possible agenda ever

Q. prepared? one of the purposes, Mr. Welsh, but the

A. Yes. a much broader range of discussions, as you can

Q. Is that Exhibit 22-18 and 19, the final version?

Q. This did contemplate, did it not, that Sanders

A. I believe so.

Q. Did you have anything to do with this draft, Exhibit 22-20?

A. Yes.

Q. What did you have to do with it?

A. I think I prepared it.

Q. Referring to Section II marked "Joint Venture" on Exhibit 22-20, appears the statement, "Sanders Supplies," and then under No. 3 there, "Bills and Supplies Devices." What devices did you have in mind there? Section II, No. 3, of Exhibit 22-20?

A. Well, to the best of my recollection, we were considering a whole series of devices which would be useful or required in the CATV field.

Q. Did that include TV gaming apparatus?

A. It may have.

Q. Wasn't that the whole purpose of meeting with TelePromter, to interest someone in commercializing the TV gaming development of Sanders? It wasn't

A. That was one of the purposes, Mr. Welsh, but we had a much broader range of discussions, as you can determine from these documents.

Q. This did contemplate, did it not, that Sanders

would build and supply the TV gaming devices?

A. It certainly was part of the discussions and ~~and~~ and explorations. ~~as Sanders thought it was feasible to do, these devices~~ MR. WELSH: May I have that TV answer, please?

Q. Was Exhibit 22-20 prepared prior to Exhibit 22-18? (Whereupon, the previous

A. I can't be certain, Mr. Welsh. It is undated. ~~the answer was read back~~

Q. Well, I believe you stated it was a draft of the ~~by the reporter.~~ final version? ~~and I believe I have an~~

Q. To whom were the devices referred to in this part numbered II, No. 3, of Exhibit 22-20? ~~in this~~

Q. So it must have been MR. ANDERSON: Read the ~~question~~ question, please?

A. It could very well have been. ~~I will object~~ (Whereupon, the previous

Q. Was it not prior, if it were a draft? ~~question was read back~~ MR. ANDERSON: I object to ~~that~~ the question. You have asked the question of this witness. ~~to~~ MR. ANDERSON: I object to the question, I don't understand it at all. It doesn't make any sense.

Q. That section of this letter or this document under joint venture states, "Sanders Supplies," and then under 3 under that, "Bills and Supplies Devices." To

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Transcription made 1983 May 13, 1976

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whom were those devices to be supplied? 1, then,

A. Well, if we could find something that was needed and TelePromter and Sanders thought it was feasible (whereupon, the previous to do, these devices would be supplied to the CATV question was read back market.

(by the reporter.)

Q. Was Exhibit 22-20 prepared prior to Exhibit 22-18?

A. I can't be certain, Mr. Welsh, it is undated.

Q. Well, I believe you stated it was a draft of the final version? draft, Mr. Welsh. I have no

A. It was a draft of some thoughts that we or I

Q. had in submitting an agenda to TelePromter prior?

Q. So it must have been done prior to submitting answer, that agenda?

A. It could very well have been. MR. ANDERSON: I will object

Q. Was it not prior, if it were a draft?

MR. ANDERSON: MR. ANDERSON: I object to that

the question. You have asked the question of

Q. this witness's knowledge and he has testified and

A. I think any further examination is redundant and

C. improper. That?

A. I think it was done. THE WITNESS: Are you looking

C. for an answer? Exhibits 22-22, 23 and 24 and ask

you if you are familiar? MR. WELSH: Yes.

8. Well, it looks like MR. ANDERSON: Well, then, reread the question, on the discussions with Teleprompter.

9. Did you prepare those documents? (At which point question was read back to the witness by MR. ANDERSON: If you recall, by the reporter.)

10. THE WITNESS: I believe I did.

11. And did you prepare THE WITNESS: And I answered you before, it could very well have been prior

12. since it was a draft, Mr. Welsh. no I have no specific recollection eight years later.

13. Do you have any belief as to whether it was prior? have anything to do with MR. ANDERSON: You may answer, if you can.

14. I believe so, Mr. Welsh MR. ANDERSON: I will object

15. only on the grounds of irrelevance. what are?

16. Well, they fit in with THE WITNESS: why I can make that assumption. its, some thoughts on the possible

17. Do you have any belief? with Teleprompter, the

18. A. Yes. were they your thoughts?

19. Q. What is that? (At which point question was read back to the witness by MR. ANDERSON: If you recall, by the reporter.)

20. A. I think it was done before.

21. Q. I hand you now, Exhibit 22-22, 23 and 24 and ask you if you are familiar with those?

A. Well, it looks like a draft of some thoughts we had on the, or I had, on the discussions with TelePrompter, to the best of my recollection.

Q. Did you prepare those documents? At any meetings you had with TelePrompter? MR. ANDERSON: If you recall.

A. I don't remember, Mr. THE WITNESS: I believe I did.

Q. And did you prepare them prior to the preparation of Exhibit 22-18? To mark this two-page letter as

A. I think so, Mr. Welsh. I have no specific recollection.

Q. Now, referring to Exhibit 22-25 to 22-33, did you have anything to do with the preparation of those

Q. documents? What has been marked as Exhibit 56

A. I believe so, Mr. Welsh. half of Magnavox and

Q. Could you tell us what those documents are? Mr. and

A. Well, they fit in the same category as the other

A. ones. Drafts, some thoughts on the possible

Q. agenda for discussions with TelePrompter for the

Q. And were they your thoughts?

A. Pardon me? A letter from Mr. Briody addressed to

Q. And were they your thoughts?

A. Well, probably, working in cooperation with Magnavox Mr. Baer.

Q. Did you furnish any of these drafts or copies of them to TelePrompter?

A. I would say no, to the best of my recollection.

Q. Did you have these drafts with you at any meetings you had with TelePromter?

A. I don't remember, Mr. Welsh.

C. ~~Has anything ever been done~~ MR. WELSH: I would like to ask the reporter to mark this two-page letter as Exhibit 56.

*the question as worded, what do you mean by  
(Whereupon, Exhibit 56 was  
furtherance of the purpose of this trial, I would like to  
mark for identification.)  
for itself.*

Q. I hand you what has been marked as Exhibit 56 which was produced on behalf of Magnavox and Sanders in response to requests for documents and ask you if that is familiar to you?

A. Yes.

Q. Would you identify what the document is for the record?

A. Well, it is a letter from Mr. Briody addressed to me dated August 30, 1974.

Q. Does it constitute an agreement between Magnavox and Sanders?

Q. ~~by Mr. Anderson~~

MR. ANDERSON: I object to

the question as asking for opinion. The document  
speaks for itself.

THE WITNESS: The document  
says sublicense agreement between Sanders Associates  
and Magnavox Company.  
Was anything ever done by Sanders in furtherance  
of this agreement?

MR. ANDERSON: I object to  
the question as ambiguous. What do you mean in  
furtherance of the agreement? The document speaks  
for itself.

THE WITNESS: I don't understand  
the question, Mr. Welsh.

Q. Did Sanders do anything with respect to the  
agreement after it was entered into?

MR. ANDERSON: You mean other  
than file it? I don't understand the question.

Q. Did Sanders do anything in performance under the  
agreement?

MR. ANDERSON: I still don't understand the question, Mr. Welsh.

Q. Did Sanders make and use a working prototype of  
a coin-operated video game referred to in the

A. agreement? Didn't know that either, Mr. Welsh.

A. Yes, it took test such games, has Sanders done

Q. Did Sanders pay Magnavox the royalty of \$50 referred to in the agreement? the question, Mr. Welsh,

A. I am not sure how that was handled, whether it was an offset against royalty payments from Magnavox or not.

Q. How did Sanders use the working prototype?

A. I think it was used for test purposes.

Q. What type of tests?

A. I have no direct knowledge of how it was used,

A. this was handled by Mr. Baer, but I believe he placed it in some installation to see what the

A. public response was to it.

Q. Has Sanders ever made more than one model of such game?

A. Yes, I think they made a small quantity.

Q. What type of a game was it?

A. I really don't know. I don't believe I have seen the test games, but they are a commercial type coin game. Hockey or something like that.

Q. Were all of the small quantity of games made the same or were they different games?

A. I really don't know that either, Mr. Welsh.

Q. Other than test such games, has Sanders done ~~anything~~ anything else with respect to them?

A. I have a problem with the question, Mr. Welsh, I don't understand what you are referring to.

Q. Did Sanders ever go into production of such games? ~~or~~ <sup>involved in</sup> any discussions regarding

A. No. question as to whether or not to go into

Q. Was a decision made not to go into production?

A. Yes. ~~some~~ discussions with Ralph, but I did not

Q. What was that decision? ~~some~~ discussions.

A. Not to go into production. With Mr. Baer, did he state

Q. Did you have anything to do with the decision?

A. It was not my decision. ~~the game?~~

Q. Whose decision was it? ~~the game?~~ Well,

A. That was a management decision. ~~recommendation to~~

Q. Who in management made the decision? ~~production~~

A. I guess it must have been the president of the corporation or another high executive.

Q. Were you informed of the reason why the decision was made?

MR. ANDERSON: You may answer that yes or no. Also business confidential and I

THE WITNESS: No.

Q. Do you know why it was decided that Sanders would not produce a coin-operated video game?

MR. ANDERSON: Answer that yes or no.

THE WITNESS: No.

Q. Were you involved in any discussions regarding the question as to whether or not to go into production?

A. I had some discussions with Ralph, but I did not get in on the management discussions.

Q. And, in your discussions with Mr. Baer, did he state any reasons for Sanders not going into production of the coin-operated video game?

A. Not that I remember, Mr. Welsh.

Q. Do you know whether he made any recommendation to management with respect to going into production on the coin-operated game?

A. Yes.

Q. What was that recommendation?

MR. ANDERSON: Well, I object, Mr. Welsh, it is hearsay as to this witness. It is also business confidential and I

instruct the witness not to answer.

Q. Did he tell you what the recommendation was?

A. Whose recommendation?

Q. Mr. Baer's recommendation.

MR. ANDERSON: Did Mr. Baer tell Mr. Etlinger what Mr. Baer's recommendation to somebody else was?

MR. WELSH: Yes.

MR. ANDERSON: You can answer

that yes or no.

THE WITNESS: Would you repeat the question, please?

(Whereupon, the previous

question was read back

by the reporter.)

THE WITNESS: Yes.

Q. What was the substance of your discussion with Mr. Baer regarding the coin-operated game?

MR. ANDERSON: You have asked that question and I have objected to it and I instructed the witness not to answer it in substantially the same form as you are now trying

to ask it and I object for the same reasons and instruct the witness not to answer for the same reasons.

by the reporter.)

Q. Did Mr. Baer state to you the reasons for his recommendation to management with respect to going into production on the coin-operated video game? with him on any specific MR. ANDERSON: You can answer that yes or no. general remarks?

A. That it was doing well. THE WITNESS: Yes. all, nothing.

Q. What were those reasons?

A. Was it doing well? MR. ANDERSON: I object and instruct the witness not to answer for the same reasons that I have objected and instructed the witness not to answer the other two times you have tried to ask basically the same question.

Q. Did Mr. Baer tell you the results of the testing of the coin-operated videogame? the answers to the questions which you MR. ANDERSON: I think you can answer that question yes or no, if I understood the question. Would you like the question read?

THE WITNESS: I can't remember the question. I can't remember the first you have had

discussions over the MR. ANDERSON: Read the question.

order to discover it (Whereupon, the previous question to those conversations question was read back to try to work out a way to get by the reporter.)

THE WITNESS: I will answer the question this way, Mr. Welsh; he made some general remarks, I never did have a detailed discussion with him on any specific results.

Q. What were the general remarks that Mr. Welsh can A. That it was doing well or not doing well, nothing further than that. beginning with the next question

Q. Was it doing well? the reporter to the contrary, A. Sometimes yes and sometimes no. dialogue will be

Q. Did he state when it was doing well and when it wasn't? sly and sealed until it is released in A. Just general things. protective order that already exists, treating that

MR. WELSH: Mr. Anderson, I wonder if the information or the answers to the questions which you have instructed the witness not to answer do not fall within our protective order?

MR. ANDERSON: Yes.

MR. ANDERSON: Yes, they may, although I understand in the past you have had discussions over the applicability of the protective

order to discovery depositions. I was not privy to those conversations. I think if you want to try to work out a way to give you that information - - -

MR. WELSH: Off the record.

Subsequent to the completion of this portion,

it was agreed by the (Discussion off the record.)

be taken under the protective order and could be

placed in the transcript as follows.) MR. ANDERSON: I will state on the record that we have agreed that Mr. Welsh can ask Mr. Etlinger certain of these business confidential questions and that beginning with the next question until we instruct the reporter to the contrary, the questions and answers and dialogue will be taken under the protective order, transcribed separately and sealed until it is released in accordance with the protective order that already exists, treating that portion of the transcript as if it were a document produced under the protective order; is that agreeable with all three lawyers? or for a year and a half, something like that.

MR. WELSH: Yes.

MR. HERBERT: Yes. I told you about the same and the

MR. ANDERSON: Please note

that all three attorneys agree with that statement;

namely, Mr. Welsh, Mr. Flannery and Mr. Herbert.

as to answer the question by relating discussions, (Whereupon, the following questions and colloquy I can't be of much help to you, if you want to ask were taken pursuant to the protective order.

to specific questions, I will be very happy to Subsequent to the completion of this portion, answer them.

it was agreed by the parties that it need not seal, what did the testing of the game consist of? be taken under the protective order and could be from what I have been told, it was placed in a placed in the transcript as follows.) in some location and seeing how much - how many

Q. Mr. Etlinger, What was the substance of the discussion with Mr. Baer regarding the coin-operated video game which Sanders built and tested?

A. I have a problem with the question because it is directed to a single discussion, one particular discussion. There were more than one.

Q. How many were there?

A. I don't know how many there were, I don't remember, but there was more than one.

Q. Over what period of time did they occur?

A. Over a year or a year and a half, something like that.

Q. Could you tell us generally what Mr. Baer told you about the game and the testing starting with your first discussion? do you ever do build and produce game?

A. I can't remember specific discussions and, if I am to answer the question by relating discussions, I can't be of much help to you. If you want to ask me specific questions, I will be very happy to answer them.

Q. Well, what did the testing of the game consist of?

A. From what I have been told, it was placing it in some location and seeing how much - how many times it was played.

Q. Was there only one game placed out on some location?

A. I think there were a few. At some small quantity.

Q. Did you have some other arrangement with the Magnavox Company with respect to the additional games other than the one specific prototype referred to in Exhibit 56?

A. Not that I remember. Mr. Welch.

Q. What did Mr. Baer state was his recommendation to management with respect to the coin-operated video games? or not getting into the video games?

A. I think Mr. Baer raised a question of Sanders building and producing games.

Q. Did he just raise the question or did he make the recommendation that Sanders do build and produce games?

A. The recommendation, Mr. Welsh, was not made to me.

Q. Did he tell you what it was?

A. From the circumstances and discussions, he made a recommendation to get into the game business.

Q. Did he tell you why Sanders did not get into the game business?

A. He told me that the management had turned it down.

Q. Did he make a recommendation to get into the business after the testing?

MR. ANDERSON: I object to the entire line as hearsay and double hearsay in several cases. You can answer, if you know.

THE WITNESS: As I mentioned before, this took place over many months, Mr. Welsh. I don't recall whether the recommendation was made before or done concurrently.

Q. Did Mr. Baer tell you the reasons stated by management for not getting into the video games?

MR. ANDERSON: Again I object on the grounds of double hearsay.

Q. The coin-operated video game business.

A. I don't believe so, Mr. Welsh.

Q. Do you have any ideas as to why management decided not to get into the coin-operated video game business?

BY THE REPORTER,

MR. ANDERSON: I object on the ground of speculation and lack of a foundation. The only thing I can say, Mr. Welsh, is apparently they didn't think it was for us. Whatever reasons, they were not communicated to me as far as I remember. I really don't know what the management reasons were. It could be it wasn't a product (Discussion off the record.) that they wanted to market or a host of reasons, but they were not communicated to me. Mr. Welsh,

in view of the fact (MR. WELSH: Let's break for lunch) of this management decision, and in view

of what has been asked and what testimony has been given, I think we can adjourn to a recess. (The recess was taken.)

of this position that we now have no further need

Q. (By Mr. Welsh) Was any of the coin-operated video games other than the prototype referred to in Exhibit 56 manufactured by Sanders under a license from Magnavox?

MR. ANDERSON: Will you read the question, please? Question, but I will try.

the following testimony, it (Whereupon, the previous question was read back sense and off my notes, as given by the reporter.) Let them now be done out. MR. ANDERSON: Are we out from under the protective order right now? additional questions? MR. WELSH: Yes, we are, as far as I know.

MR. ANDERSON: I object, what additional questions? MR. FLANNERY: Off the record. MR. WELSH: The ones that they made in addition to the single prototype? (Discussion off the record.) mentioned in Exhibit 56.

MR. ANDERSON: Mr. Welsh, in view of the fact that you are not leaving the subject of this management decision, and in view of what has been asked and what testimony has been given, I think we can waive the confidentiality of that portion that we had just before lunch and let the reporter run the whole thing through unsealed. We were all a verbal agreement, as I mentioned this morning. MR. WELSH: Fine, that is them, all right. MR. ANDERSON: THE WITNESS: I'd like to repeat, Mr. Anderson. THE WITNESS: I am having difficulty answering your question, but I will try.

I believe that Mr. Briody and I had furthering of discussions on additional units under the license and if my memory serves me correctly, that they were to be done on the same terms. the decision

Q. Were royalty payments made for those additional machines?

MR. ANDERSON: I object, what additional machines?

MR. WELSH: The ones that they made in addition to the single prototype the mentioned in Exhibit 56?

THE WITNESS: I think I will answered that question this morning, but I will answer it again. I don't know how things were done, there may have been a set-off. Magnavox pays us money, it may have been put in as a credit.

Q. There were not any other agreements with respect to those other machines, however, were there?

A. No, I think we had a verbal agreement, as I mentioned this morning, we made just a few of them.

MR. WELSH: I'd like to request, Mr. Anderson, any documents which Magnavox or Sanders has relating to the construction

of these coin-operated video games, the testing of them and any communications between Magnavox and Sanders relating to them. Also we request any documents referring or relating to the decision not to go into production on the coin-operated video games?

MR. FLANNERY: From the letter, the question MR. ANDERSON: All right; we will take it under advisement.

MR. WELSH: When can you tell us, Mr. Anderson, because of the shortness of the remaining discovery time?

MR. ANDERSON: Well, we will have to make a search and investigate it and I would really like to have the request in either a letter or have the transcript so I know that I have it precisely right. Do you want to give me a letter Friday and I will try to have some answer for you when we resume next week? I question the relevancy of what you are asking for. On what theory do you believe that any of this is relevant to any issue in the litigation?

MR. FLANNERY: Well, I think it is relevant for a couple of issues. One is the

scope of the claims and second is the misuse of the patents.

MR. ANDERSON: I guess I don't understand in that general sense how it is relevant to either one of those.

Q. What patents did you MR. FLANNERY: From the letter, the sublicense agreement, Mr. Anderson, it states that these coin-operated games must be covered by three of the patents that were licensed under the Sanders-Magnavox license agreement.

MR. ANDERSON: Anything else?

A. At this time we found MR. FLANNERY: That is all I can think of right now.

Q. Mr. Etlinger, was a determination made as to the second condition stated in Exhibit 56 in the second paragraph, that three or more of the video game patents included in the January 27, 1972, license agreement between the Magnavox Company and Sanders Associates cover your new coin-operated video game?

THE WITNESS: Just give me the

first four or five words at the beginning of that question.

17. At 10:15 a.m. on the 26th (Whereupon, the previous  
more easier and more question was read back of  
article + when read by the reporter.)

THE WITNESS: I think we ought  
assumed that they did, Mr. Welsh.

Q. What patents did you assume covered the coin-operated  
video game? (Answer out of record.)

A. Are you asking me at the time of this letter? terms  
I don't remember at the time of this letter. which

Q. When you said you assumed that at least three patents  
did - in any - licence agreement wherein

A. At that time we found no problem, we found no  
problem with the fact that there were three patents  
covering it. I don't remember which ones at the  
time, whether we looked into it or didn't look into  
it, but we had no problem with this condition at  
all. (Answer out of record.) You may answer,

Q. When you say we, do you mean Sanders?

A. I had no problem with it. (Answer out of record.) I think I did,

Q. Did Mr. Seligman have anything to do with this  
agreement? (Answer out of record.)

A. No. (Answer out of record.)

Q. Referring to Exhibit 44, the agreement of January 27,

Q. 1972, between the Magnavox Company and Sanders  
Associates and more specifically paragraph E of  
Article 4 which reads ---. (Editor: You are referring  
now to Article known MR. ANDERSON: It Maybe we ought  
to go off the record.

MR. WELSH: Yes.

(Discussion off the record.)

MR. WELSH: Well, I may not

Q. "Sanders shall have the right to approve the terms  
and conditions of all sublicense agreements which  
approval shall not unreasonably be withheld but  
provided that in any sublicense agreement wherein  
the cash payment under Article 5, Sections 1 and 2,  
and royalty rates are at least one-half of those  
set forth in Articles 5 and 6, Sanders shall not  
have such right of approval." Who suggested that  
that provision be included in the license agreement?

MR. ANDERSON: You may answer,  
if you know.

MR. WELSH: I can say. THE WITNESS: I think I did,  
Mr. Welsh, but it is hard to say, we had so many  
drafts go back and forth.

Q. Was it not suggested on the part of somebody on either  
behalf of Sanders? MR. WELSH: It was suggested on either party.

A. Well, I answered your question, I did.

Q. Why was that provision included?

MR. ANDERSON: You are referring now to Article Roman numeral IV, subsection E in its entirety?

MR. WELSH: Yes.

THE WITNESS: Well, I may not recall the specific reasons at the time. One of the things I think was that to the extent that we had the right to approve, which is very limited here, we wanted to make sure that the licenses were granted properly with respect to the law and that there would be proper treatment under the law.

Q. Do you remember any other reasons?

A. No, the granting of sublicenses, I believe do.

Q. Was there any business reason?

A. Business reason?

Q. Yes.

A. None that I can remember.

Q. Was one of the reasons that you desired to approve the parties that might be granted sublicenses?

A. No, there is nothing in here about approving parties nor does it give any rights to us to approve parties.

Q. Referring again to the coin-operated video games, the subject of Exhibit 56, are any of those games ~~ever~~ still in existence?

A. I really don't know. ~~Mr. WELSH: Well, I don't~~

Q. Was there a business reason for including in the licensing agreement with Magnavox, Exhibit 44, the right for Magnavox to grant sublicenses? ~~at is~~

A. Mr. Welsh, I have a little problem, I don't understand completely what you mean by a business reason. ~~not understand~~

Q. Well, was there any reason for granting Magnavox the right to grant sublicenses? ~~from advantages -~~

A. It became a matter of negotiation, also since they were in the industry, they were in the best position to seek licenses and grant them. ~~of sublicenses?~~

Q. Upon the granting of sublicenses, Magnavox no longer is an exclusive licensee, is it? ~~test to the~~

MR. ANDERSON: I object to ~~it to~~ the question. It is vague and ambiguous; I don't understand it, and, if anything, the document speaks for itself. ~~in the document states as a premise~~

THE WITNESS: I don't understand the question either, if you are waiting for an answer. ~~to the question~~

Q. Well, did you consider whether it was more ~~that is~~

advantageous to have Magnavox as an exclusive licensee or to have Magnavox able to grant sublicenses to others? *an exclusive licensee or a non-exclusive licensee?*

MR. ANDERSON: Well, I object to the question, I don't think those are alternatives. I don't understand that question. I think it is ambiguous. It is couched in language that is being misused in some way.

Did you mean?

THE WITNESS: I don't understand the question either. *the industry among others.*

Q. Did you not consider whether it was advantageous - more advantageous to have Magnavox as an exclusive licensee rather than have Magnavox become a non-exclusive licensee upon the granting of sublicenses?

A. I don't understand that question either, Mr. Welsh.

MR. ANDERSON: I object to the question. Apparently you are trying to inject into the question some specific discussions of your own that may or may not have some viability. It seems that you are trying to state as a premise for the question that an exclusive licensee ceases to be an exclusive licensee if they have the right to grant sublicenses and I don't know that that is

true.

Q. Did you consider it was more advantageous to have Magnavox as an exclusive licensee or a nonexclusive licensee?

A. No.

Q. Referring to your previous answer in which you stated Magnavox was in the industry and in the best position to grant sublicenses, what industry did you mean?

A. Well, they were in the TV industry among others. Magnavox is a company that has a broad range of activities and products.

Q. Who proposed that the license be exclusive?

MR. ANDERSON: If you know.

THE WITNESS: I think it evolved over the negotiations and the drafts.

A. I think Magnavox proposed it at one time or another, that it be exclusive.

Q. Who proposed that Magnavox have a right to sublicense?

A. Well, I believe it was Magnavox.

Q. Did Magnavox give any reasons why they wanted the right to sublicense?

A. None that I remember.

Q. I would like to ask THE WITNESS: "I would like to ask the reporter to mark as Exhibit 57 a copy of a letter furnished in response to requests for production of documents to Mr. Louis Etlinger from Mr. Thomas Briody dated February 20, 1975; and a letter of March 4, 1975, from Mr. Etlinger to Mr. Briody as Exhibit 58?" (Q. I am a technician, I am not sure.)

(Whereupon, Exhibits 57 and 58 were marked for identification.)

Q. I hand you now Exhibit 57 and ask you if you received the original of that letter? (Q. I did.)

A. Yes. I ask you if you prepared and sent to

Q. And did you receive it shortly after the date it bears, February 20, 1975?

A. The answer to that is I don't know. (Q. I did receive the letter because I have initialed it.)

Q. When do you believe that you received it? (Q. I have

A. I assume sometime after it was mailed.

Q. Did you reply to the letter? (Q. That letter to

A. As far as I know, yes. (Q. I did.) (Q. I did.)

Q. I hand you now Exhibit 58 and ask if that is a copy

of your reply to Mr. Brody's letter of February 20?

A. Yes. I am at the moment unable to

Q. Did you prepare that reply?

A. Yes. (I am not sure when exactly I prepared it.)

Q. Who is Mr. Cope referred to in the second page of Exhibit 58?

A. He is an engineer with the company or a technician, I am not sure. (I am not sure what his real title is.)

Q. Do you know what department he works in? (I am not sure.)

A. He works over on Canal Street. (I don't know the department.) (I am not sure.)

Q. Mr. Etlinger, I now hand you what have been marked as Exhibits 32-C1, 32-C2, 32-D1, 32-D2 and 32-D3 and I ask you if you prepared and sent to Gerald Martin to whom that letter is addressed that letter?

A. Referring to the letter of December 2, 1972?

Q. Yes, Exhibit 32-C1 and C2.

A. Yes. I haven't seen the other one yet, C1. I have answered it and I am not sure if I have. (I am not sure if I have.)

Q. Did you enclose with a copy of that letter to Mr. Martin a copy of Exhibit 32-D1, D2 and D3?

A. I believe so.

Q. Did you read that proposal which is Exhibit 32-D1, D2 and D3 at the time that you mailed it to Mr. Martin? [which was referred as Exhibit 32-D1, D2 and D3 at the time that you mailed it to Mr. Martin?]

A. Will you read the question back? [which was referred as Exhibit 32-D1, D2 and D3 at the time that you mailed it to Mr. Martin?]

The following question was then received a telephone call from Mr. Welsh, [which was referred as Exhibit 32-D1, D2 and D3 at the time that you mailed it to Mr. Martin?]

(Whereupon, the previous question was read back by the reporter.)

Q. [which was referred as Exhibit 32-D1, D2 and D3 at the time that you mailed it to Mr. Martin?]

THE WITNESS: I presume so.

Q. Do you find on page 2 of that proposal under paragraph 2.1, Category 3, the term "Space War"?

A. Yes.

Q. Do you recall seeing that term at the time that you sent this proposal to Mr. Martin?

A. If I recall now that I saw it then, the answer is no.

Q. Does that term mean anything to you now in the context of this proposal? [which was referred as Exhibit 32-D1, D2 and D3 at the time that you mailed it to Mr. Martin?]

A. I don't understand the question, Mr. Welsh.

Q. Does seeing the document refresh your recollection

at all as to seeing that term when you sent the proposal to Mr. Martin? [which was referred as Exhibit 32-D1, D2 and D3 at the time that you mailed it to Mr. Martin?]

A. No, [which was referred as Exhibit 32-D1, D2 and D3 at the time that you mailed it to Mr. Martin?]

Q. Last November at the deposition of Sanders taken through Mr. Seligman, there was produced a punched paper tape which was marked as Sanders Exhibit 5 and which Mr. Seligman stated had been provided by Mr. Frisbie after Mr. Frisbie received a telephone call from you. Did you make such a telephone call to Mr. Frisbie?

A. I asked him for what. MR. ANDERSON: I Object, what's telephone call, you said such telephone call?

What was that? MR. WELSH: The one I just referred to in my prefacing statement. subpoena or whatever it was. THE WITNESS: I think I made the telephone call to Mr. Frisbie.

Q. When did you make that telephone call?

A. It must have been sometime before we produced this. A few days before or some period of time.

Q. How did you happen to call Mr. Frisbie?

A. I think it was in response to some - either request or interrogatory or subpoena - that we made a search for documentation that was requested.

Q. How did Mr. Frisbie's name come up?

A. Well, under our efforts to locate the requested items, we called the people most likely to know or

have knowledge or have custody of items." Mr. Frisbie is in our programming group and I guess that is where we were looking for programs or tapes and he seemed the logical man to call.

Q. What did you say to him when you called him?

A. I don't remember. I remember saying that we knew

Q. Did you ask him for anything? we needed to respond

A. I asked him for whatever we were looking for at the time, Mr. Welsh. ~~What does he mean? Can you paraphrase~~

Q. What was that? ~~What does he mean?~~

A. Well, will you give me a copy of the subpoena or in whatever it was that prompted this, then I will be able to tell you.

Q. Did you read him paragraphs of the subpoena or did you ask him for materials related to games played on CRT's? ~~What does he mean?~~

A. I don't recall. ~~What does he mean?~~

MR. ANDERSON: I believe it was the 30-B6 request that we were searching for at about that time, if I am not mistaken. As you pointed out in one of your original questions this afternoon, this was about the time that the 30-B6 deposition was taken.

MR. WELSH: Well, this was produced on that day which was 11-20-75; that is, Exhibit 5 was produced on that day.

Q. Do you remember any of the conversation with Mr. Frisbie?

A. All I can say is I remember asking him if he knew of any items, you know, that we needed to respond to the formal document.

Q. Well, did you ask him that way or did you paraphrase what was in the document?

A. I don't remember, Mr. Welsh, the specific terms in which I asked him, but he did come up with that tape.

Q. Did he bring the tape to you?

A. I don't know if he brought it to me or sent it up. I have no recollection of it.

Q. Did you discuss with him where he obtained the tape?

A. Yes.

Q. Where did he say he obtained it?

A. He obtained it in the old storeroom.

Q. And where was that located?

A. Somewhere in the bottom of the building.

Q. This building? *... please?*

A. Yes, I don't know where it is and I don't think I have ever been there. *(Collected, collected.)*

Q. Did he say where in the old storeroom he obtained the tape? *(Collected, collected.)*

A. I don't believe so. *(Collected, collected.)*

Q. Did he state whether it was located with any particular computer?

A. I am not sure. *(Collected, located a particular computer)*

Q. Did he say how long the tape had been there?

A. I don't remember that. I have no recollection of that. *(Collected, located, I am not sure whether they referred to)*

Q. In your conversation with him, was any computer referred to?

A. I think the tape was for a PDP-1. *(Collected, located)*

Q. Did he state that?

A. I don't remember that. *(Collected, located, it was stated.)*

Q. Was the tape for a PDP-1 computer owned by *...* Sanders?

A. I don't know if these tapes are for any particular PDP-1 computer or not, Mr. Welsh. I don't know if whether they work on one or all. *(Collected, located, it was*

MR. WELSH: Could you read

the question back, please?

I don't know that.

(Whereupon, the previous  
Q. Did you and Mr. Frisbie discuss when it was moved?  
A. I don't know about that.

question was read back  
by the reporter.)

(Whereupon, the previous question was received

Q. Did the subject of a PDP-1 owned by Sanders come  
A. up in your discussion with Mr. Frisbie? I know when  
A. It may have.

Q. Do you know whether Sanders owned a PDP-1 computer  
A. at that time? I know when it came from and when

A. Sanders did own a PDP-1 computer at one time which  
A. was located in Bedford. I am not sure whether they  
A. still have it or it may be in that storeroom, I  
A. don't know.

Q. Was the PDP-1 computer ever moved from Bedford Welsh  
to Nashua? I told you the records already show

A. Well, if it is in the storeroom, it was moved.

Q. You didn't know whether it was in the storeroom?

I thought you meant at that time in November --

A. I have some vague recollection of it being in a  
storeroom, so the answer to your question is, if it  
was moved from Bedford to the storeroom, it was  
moved.

Q. When was it moved? <sup>when I talked to him or whether</sup>

A. I don't know that. <sup>it was</sup>

Q. Did you and Mr. Frisbie discuss when it was moved?

A. I don't believe so. <sup>we were from or when it came</sup>

Q. Did you and Mr. Frisbie discuss when Sanders received this tape, Exhibit 5?

A. I think I asked him and I don't think he knew when we received it. <sup>where the tape came from or when?</sup>

Q. What was said between you in that regard? <sup>he</sup>

A. I believe I asked him where it came from and when and he didn't know. <sup>he</sup>

Q. Did you ask him if he knew who might know? <sup>information</sup>

A. I may have. <sup>he</sup>

Q. Did he say who might know? <sup>information, Mr. Frisbie</sup>

A. I think he referred to a Mr. Ted Mairson. Mr. Welsh, you have all this on the record already from Mr. Seligman's testimony. <sup>in giving the tape or the</sup>

Q. Well, he was testifying with respect to your <sup>you</sup> telephone conversation and I am now seeking what occurred from your recollection. Did you have any conversation with Mr. Mairson regarding where the tape came from? <sup>in giving the tape or the</sup>

A. I am trying to remember if I even talked to him.

I don't remember whether I talked to him or whether someone else talked to him.

Q. Was some information obtained from Mr. Mairson regarding where the tape came from or when it came to Sanders?

A. I am not sure.

Q. Were you advised of any information received from Mr. Mairson about where the tape came from or when?

A. Somewhere along the line, I am not certain, I think it came with the machine.

Q. It came with the machine?

A. I am not sure of that. I have a vague recollection of that being a possibility.

Q. What is the source of your information, Mr. Frisbie telling you or Mr. Mairson?

A. Maybe somebody through Mairson, I don't know.

Q. What did Mr. Mairson have to do with the tape or the computer, the PDP-1?

A. He was stationed in Bedford.

Q. Is he employed by Sanders today?

A. I believe so.

Q. Where is he employed at Sanders today?

A. I think he is in this building.

228  
Q. When was the PDP-1 received at Sanders?

A. I don't know.

229  
Q. Did anyone obtain any information from Mr. Prishie or Mr. Mairson as to when the PDP-1 was obtained by Sanders?

230  
A. I think someone checked into it; I don't remember it and I think - wasn't that asked in an interrogatory and answered?

Q. Were you given any information as to when the PDP-1 was received?

A. I think someone may have told me, but I don't remember the date right now.

31  
Q. Do you remember the date approximately; was it in the 1960's?

A. No, I don't remember.

Q. Do you remember whether it was here prior to 1970?

A. I don't.

Q. Do you have any recollection as to when you were told the PDP-1 was obtained by Sanders?

A. No, I don't have any recollection of the date.

Q. Was Mr. Mairson at Bedford when the PDP-1 was received?

A. I really don't know.

Q. Were you told anything in that regard?

A. Not in that regard, no.

Q. How long has Mr. Mairson been with Sanders?

A. I don't know.

Q. Do you have any information in that regard as to how long he has been here?

A. I know he has been here a while, several years.

Q. Ten years, as long as ten years?

A. He may have been, yes. That is something we can get for you, Mr. Welsh, I don't remember. We can check that out, but I don't carry around in my head how long he has been here or how long anybody else has been here.

MR. WELSH: We would like Mr. Mairson's and Mr. Frisbie's full name. Also we would like to take their depositions, would you be willing to produce them without subpoenas?

MR. ANDERSON: Well, I think the question probably isn't as much subpoenas as to how or when it could possibly be done. We are scheduled for next week already.

MR. WELSH: Off the record.

(Discussion off the record.)

MR. WELSH: That completes my direct examination of Mr. Etlinger.

MR. ANDERSON: All right; shall we continue the same arrangement in effect where he will read it and sign it before any notary public?

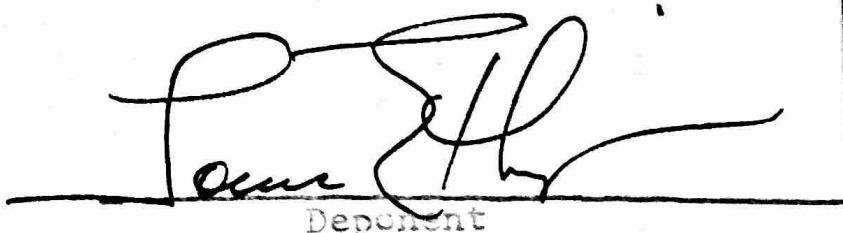
MR. WELSH: Yes.

MR. ANDERSON: Mr. Herbert, do you have any direct or cross-examination?

MR. HERBERT: No, I have not.

MR. ANDERSON: All right, Mr. Etlinger, you are excused.

THE WITNESS: Thank you.



Paul E. Ell  
Depoent

THE STATE OF NEW HAMPSHIRE)

COUNTY OF Belknap) SS.

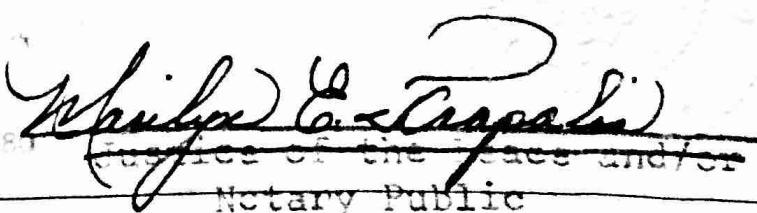
Subscribed and sworn to before me this 13th

day of May 1976.

Marilyn E. Tropoli

Notary Public

My Commission Expires March 19, 1981



Marilyn E. Tropoli  
Notary Public

EXHIBITS

| <u>No.</u> | <u>Page</u> | <u>Description</u>                                 |
|------------|-------------|--|
| 56         | 36          | August 30, 1974, letter from Briody to Etlinger.   |
| 57         | 59          | February 20, 1975, letter from Briody to Etlinger. |
| 58         | 59          | March 4, 1975, letter from Etlinger to Briody.     |